

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JENNIFER HAGSTROM,

Plaintiff,

v.

SAFEWAY INC,

Defendants.

Case No. C20-1160 RAJ-TLF

ORDER TO SHOW CAUSE

Noted for December 18, 2020

This matter comes before the Court on plaintiff's motion for leave to file an amended complaint (Dkt. 17) and defendant's motion to strike plaintiff's first amended complaint (Dkt. 20). For the reasons set forth below, plaintiff is directed to show cause why plaintiff's motion to file an amended complaint should not be denied and why the Court should not grant defendant's motion to strike plaintiff's first amended complaint. In the alternative, plaintiff may file a second proposed amended complaint for the Court to consider in determining plaintiff's motion for leave to file an amended complaint.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff originally filed this action before the Superior Court of Washington in and for King County alleging causes of action for negligence and respondeat superior against Safeway Inc. ("Safeway"), Safeway Store #2734, and Doe Defendants. Dkt. 1-2. Defendants removed this action to this Court on July 29, 2020. Dkt. 1

1 On August 10, 2020 plaintiff filed an amended complaint raising the same causes
2 of action but adding Albertson Holdings, LLC and AB Acquisitions, LLC, as defendants.
3 Dkt. 16. On August 27, 2020 plaintiff filed a Motion for Leave to File Amended
4 Complaint, to Relate Amendment Back and to Remand to State Court. Dkt. 17. In her
5 motion, plaintiff explained that after filing the first amended complaint (Dkt. 16),
6 defendant contacted plaintiff objecting to the amended complaint indicating that it was
7 improper under Fed. R. Civ. P. 15 and that adding Safeway's parent companies was
8 improper. Dkt. 17 at 4. Plaintiff further stated that the parties ultimately agreed that filing
9 the amended complaint was proper under Fed. R. Civ. P. 15. Dkt. 17 at 4 n. 1. Plaintiff
10 filed her pending motion to ensure that there were no irregularities in connection with
11 the joinder of Albertson Holdings, LLC and AB Acquisitions, LLC in this action and
12 because plaintiff believed that the new parties destroyed diversity jurisdiction. *Id.*

13 Plaintiff's motion argues that pursuant to Fed. R. Civ. P. 15, the Court should
14 grant plaintiff leave to file an amended complaint. Dkt. 17 at 6-9. Additionally, plaintiff
15 requests that the Court make a finding that the claims against Albertson Holdings, LLC
16 and AB Acquisitions, LLC relate back to the date that plaintiff's complaint was originally
17 filed. *Id.* at 9-13. Finally, plaintiff requests that if the Court grants plaintiff's motion, the
18 Court should also remand this case back to state court because Albertson Holdings,
19 LCC, is a Washington limited liability company. *Id.* at 13-14.

20 Safeway filed a motion to strike plaintiff's first amended complaint for damages.
21 Dkt. 20. First, Safeway notes that plaintiff has added Albertson Holdings, LLC, a
22 Washington limited liability company, as Safeway's parent company. *Id.* at 2. However,
23 Safeway informs the Court that Safeway's parent company is Albertson's Holdings,
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1 LLC, a Delaware corporation. *Id.* Safeway states that Albertson Holdings, LLC, a
2 Washington limited liability company, is a different unrelated entity and is not Safeway's
3 parent company. *Id.* Additionally, Safeway states that AB Acquisition, LCC is the parent
4 company of Albertson's Holdings, LLC, the Delaware corporation. *Id.*

5 Based on the foregoing, Safeway argues that Albertson Holdings, LLC, the
6 Washington limited liability company, is not a proper party because it is unrelated to
7 Safeway or any other party. Dkt. 20 at 3. Additionally, Safeway argues that Albertson's
8 Holdings, LLC and AB Acquisition, LLC are not proper parties because plaintiff cannot
9 satisfy the elements necessary to pierce the corporate veil. *Id.* at 4-6. Accordingly,
10 Safeway argues that plaintiff cannot state a valid claim against Albertson's Holdings,
11 LLC or AB Acquisition, LLC and the Court should therefore strike plaintiff's amended
12 complaint as futile. *Id.* at 5-6.

13 Plaintiff filed a response in opposition to Safeway's motion to strike. Dkt. 26.
14 Plaintiff acknowledges that plaintiff inadvertently added Albertson Holdings, LLC, the
15 Washington limited liability company, instead of Albertson's Holdings LLC, the Delaware
16 corporation. *Id.* at 8-9. Plaintiff argues that the Court should grant plaintiff leave to
17 amend the complaint to add the correct parties to this litigation. Dkt. 26 at 10-12.

18 Plaintiff argues that Safeway has not met its burden in showing that amendment
19 would be futile. Dkt. 26. at 11. Plaintiff contends that if plaintiff's claims against
20 Safeway's parent companies were futile Safeway would have made this clear in their
21 answer to the complaint and in answering plaintiff's requests for admissions. *Id.* Plaintiff
22 maintains that she asked Safeway to admit that no third party was at fault in causing
23 plaintiff's injuries and Safeway responded that Safeway lacks sufficient information to
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1 either admit or deny the request. *Id.* at 6, 11. Based on this response, plaintiff argues
2 that Safeway cannot show that plaintiff's claims against Safeway's parent corporations
3 are futile and the Court should grant plaintiff leave to amend the complaint. *Id.* at 12.

4 Safeway filed a response to the plaintiff's motion for leave to amend the
5 complaint. Dkt. 28. Safeway argues that the Court should deny plaintiff's motion as futile
6 because plaintiff has not produced evidence to support a basis to pierce the corporate
7 veil and therefore cannot state a claim against Safeway's parent companies. *Id.* at 7-8.

8 Plaintiff and Safeway have each filed a reply brief in support of their respective
9 pending motion. Dkt. 30, 32. Plaintiff has withdrawn her motion for remand, but is still
10 requesting that the Court grant plaintiff leave to amend the complaint and find that
11 plaintiff's amended complaint relates back to the date of the original complaint. Dkt. 30.

12 DISCUSSION

13 A. Leave to Amend

14 Pursuant to Federal Rule of Civil Procedure 15(a), after an initial period for
15 amendment as of right, pleadings may be amended only with the opposing party's
16 written consent or by leave of the court. Leave to amend should be freely given when
17 justice so requires. Fed.R.Civ.P. 15(a)(2); *Desertrain v. City of Los Angeles*, 754 F.3d
18 1147, 1154 (9th Cir. 2014) ("[T]his policy is to be applied with extreme liberality.")

19 The Court must consider five factors when determining the propriety for leave to
20 amend: bad faith, undue delay, prejudice to the opposing party, futility of amendment,
21 and whether the plaintiff has previously amended the complaint. *Desertrain*, 754 F.3d at
22 1154; *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004). For each of these
23 factors, the party opposing amendment has the burden of showing that amendment is
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1 not warranted. *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987); see
2 also *Richardson v. United States*, 841 F.2d 993, 999 (9th Cir. 1988).

3 There is no evidence that plaintiff seeks to amend the complaint in bad faith, to
4 cause undue delay or for an otherwise improper purpose. Additionally, Safeway has not
5 shown that Safeway will be prejudiced by granting leave to amend to add Safeway's
6 parent companies. Instead, Safeway opposes plaintiff's amended complaint contending
7 that the proposed amendments would be futile because plaintiff cannot provide
8 evidence justifying piercing the veil to hold Safeway's parent companies liable.

9 1. Futility of Amendment

10 Futility of amendment alone can justify the denial of a motion to amend. *Johnson*,
11 356 F.3d at 1077. Leave to amend should only be denied as futile when no set of facts
12 can be proven under the amended pleading that would constitute a valid claim.
13 *Barahona v. Union Pac. R.R.*, 881 F.3d 1122, 1134 (9th Cir. 2018). However, a plaintiff
14 is not required to produce evidence supporting the amended complaint at this early
15 pleading stage, rather an amended complaint must plead facts sufficient to plausibly
16 state a claim. See, *Barahona*, 881 F.3d at 1134, *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d
17 209, 214 (9th Cir. 1988) (stating that the standard for considering whether amendment
18 would be futile is the same standard used when considering the sufficiency of a
19 pleading challenged under Rule 12(b)(6)).

20 It is a general principle of corporate law that a parent company is not inherently
21 liable for the torts of its subsidiaries. *United States v. Bestfoods*, 524 U.S. 51, 61 (1998).
22 This corporate veil may be pierced when "the corporate form would otherwise be
23 misused to accomplish certain wrongful purposes, most notably fraud, on the
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1 shareholder's behalf." *Id.* at 62. State corporate law and common law principles of
2 liability apply in determining whether the corporate veil should be pierced, unless there
3 is express statutory authority otherwise. *Id.* at 63.

4 Under Washington law, to pierce the corporate veil and hold a parent company
5 liable, the plaintiff "must show that there is an overt intention by the corporation to
6 disregard the corporate entity in order to avoid a duty owed to the party seeking to
7 invoke the doctrine." *Minton v. Ralston Purina Co.*, 146 Wn.2d 385, 398 (2002).

8 Generally, the plaintiff must demonstrate that the parent company manipulated the
9 entities in order to avoid the legal duty. *Id.* Alternatively, a plaintiff may also pierce the
10 corporate veil by demonstrating an alter ego theory of liability. *Grayson v. Nordic*
11 *Constr. Co.*, 92 Wn.2d 548, 553 (1979).

12 Further, a parent company can be held directly liable for its own conduct when
13 the parent company directly participates in the conduct, directs the conduct, or the
14 alleged wrong can otherwise be traced to the actions of the parent company. *Bestfoods*,
15 524 U.S. at 64-65.

16 Plaintiff's proposed amended complaint alleges that the newly added defendants
17 are Safeway's parent companies. Dkt. 18-3 at ¶¶ 4-5. Plaintiff's amended complaint
18 alleges that she was injured when she slipped and fell on a liquid substance while
19 shopping at a Safeway supermarket/grocery store in Kirkland, Washington. *Id.* at ¶¶ 24-
20 29. The proposed amended complaint alleges that the defendants are liable for
21 negligence as a result of this incident. *Id.* at ¶¶ 30-36. Finally, the amended complaint
22 alleges that Safeway's parent companies are liable for plaintiff's injury under a
23 respondeat superior theory of liability. *Id.* at ¶¶ 37-38.

1 Plaintiff's amended complaint does not provide any facts indicating that
2 Albertson's Holdings, LLC or AB Acquisitions, LLC disregarded the corporate entity to
3 avoid a duty owed to plaintiff or otherwise manipulated the entities in this action to avoid
4 a legal duty. Plaintiff's amended complaint also fails to allege any facts indicating that
5 plaintiff is relying on an alter ego theory of liability. Accordingly, plaintiff has not alleged
6 any facts, that if proven, would warrant the Court piercing the corporate veil to hold
7 these parent companies liable.

8 Additionally, the proposed amended complaint does not allege facts indicating
9 that Albertson's Holdings, LLC or AB Acquisitions, LLC, exercised control over the
10 Safeway store location in question or directed Safeway's conduct in operating this
11 location. For this reason, plaintiff's complaint does not allege facts, supporting a theory
12 of direct liability against Albertson's Holdings, LLC or AB Acquisitions, LLC.

13 Based on plaintiff's current proposed amended complaint, it appears that
14 plaintiff's proposed amendments are futile because they do not allege facts that, if
15 proven, would constitute a valid claim for liability against Albertson's Holdings, LLC or
16 AB Acquisitions, LLC.

17 CONCLUSION

18 Based on the foregoing, plaintiff is directed to show cause why plaintiff's motion
19 for leave to amend (Dkt. 17) should not be denied as futile and Safeway's motion to
20 strike (Dkt. 20) should not be granted. In the alternative, plaintiff may file a second
21 proposed amended complaint curing, if possible, the deficiencies identified above. If
22 plaintiff elects to file a second proposed amended complaint, the Court will review the
23 proposed amended complaint to determine if leave to file the proposed complaint as the
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1 operative complaint is warranted. Plaintiff may either show cause why her motion
2 should not be denied or file a second proposed amended complaint, on or before
3 **December 18, 2020.**

4 Additionally, at this time, plaintiff's motion for a finding that the proposed
5 amendments relate back to the date of the original complaint is moot. Accordingly, the
6 Court will consider plaintiff's motion to relate back if plaintiff shows cause why the
7 proposed amendments are not futile or submits a second proposed amended complaint.

8 The Clerk is directed to send this Order to counsel for the parties in this action.

9 Dated this 20th day of November, 2020.

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Theresa L. Fricke
13 United States Magistrate Judge
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